IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 878 of 2007

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABNISTAN ISMAILBHAI PATEL LEGAL HEIR & REPRESENTATIVE OF DECEASED ISMAILBHAI AHMEDBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT THR' COLLECTOR & 3 - Respondent(s)

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Appearance :
MR NV SOLANKI for Petitioner(s)
MS MINI NAIR, AGP, for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 02/02/2007

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant petition under Article 226 of the Constitution, the petitioner, i.e. Mr.Rabnistan Ismailbhai Patel, who claims to be the heir and legal representative of deceased Ismailbhai Ahmadbhai Patel, has prayed to issue a Writ of Certiorari or a Writ of Mandamus or any other appropriate Writ or order declaring that the action of the respondents in taking over possession of the lands belonging to his father and making of an award by the respondent No.2 on May 12, 1997 in Compensation Case No.35 of 1995 with respect to the lands of the father of the petitioner are illegal, arbitrary, ultra-ires, de-hors the provisions of the Land Acquisition Act, 1894 (“the Act” for short), discriminatory, unjust and not legally binding on the petitioner. In the alternative, the petitioner has prayed to

direct the respondent No.2 to consider and take appropriate decision on the application filed by the deceased father of the petitioner on February 16, 1998, requiring the respondent No.2 to refer his case to the Court for the purpose of determination of just amount of compensation payable to him.

2. The father of the petitioner was resident of village Govindpura (Jarod), Taluka: Vaghodia, District: Vadodara. He was the owner of agricultural land bearing Survey Nos.1215/2-Paiki admeasuring approximately 3 Hectares, 52 Are and 1 sq.mt. situated at village Govindpura (Jarod). The abovementioned land belonging to the father of the petitioner and other lands of village Govindpura (Jarod) were needed for the public purpose of re-settlement and development of Narmada Project under the Sardar Sarovar Narmada Nigam Limited. Therefore, the respondent No.3, i.e. Sardar Sarovar

Rehabilitation Agency entered into private negotiations with the owners / interested persons to get the lands on payment of reasonable price. The record shows that the father of the petitioner and others were persuaded to part with possession of the lands needed and the father of the petitioner had accepted 90% of the amount of compensation i.e. Rs.1,09,552/- determined by the respondent No.3. After the possession of the lands was handed over by the owners to the respondent No.3, the Government had issued notification under Section 4(1) of the Act on September 29, 1995, stating that the abovementioned lands with other lands were likely to be needed for the public purpose of re-settlement and development of Narmada Project under Sardar Sarovar Narmada Nigam Limited. A copy of the said notification is produced by the petitioner at Annexure-A to the petition. The Special Land Acquisition Officer thereafter

submitted his report under Section 5-A(2) of the Act to the State Government on the basis of which declaration under Section 6 of the Act was made which was published in the official gazette on November 22, 1996. A copy of the declaration made under Section 6 of the Act is produced by the petitioner at Annexure-B to the petition After publication of declaration under Section 6 of the Act, the Special Land Acquisition Officer made consent award under Section 11(2) of the Act on May 12, 1997, a copy of which is produced by the petitioner at Annexure-C to the petition The Special Land Acquisition Officer thereafter addressed a communication dated May 12, 1997 to the Assistant Commissioner, Re-settlement and Rehabilitation, Unit No.3, Vadodara, informing him that the consent award was made on May 12, 1997, and therefore, rest of the 10% of the amount, as mentioned in the award, should be paid to the claimants and

receipts should be sent to him. From the averments made in the petition, it is evident that the rest of the 10% of the amount was paid to the concerned claimants, including the deceased father of the petitioner.

3. The case of the petitioner is that the possession of the land belonging to the father of the petitioner was taken de-hors the provisions of the Act which is illegal and as the acquisition proceedings commenced only with the publication of notification issued under Section 4(1) of the Act in the official gazette, the action of taking over of possession of the lands should be treated as illegal. It is mentioned in the petition that the members of the Purchasing Committee constituted by the respondent No.3 had approached the father of the petitioner and made him to understand that as the lands were going to be acquired for Narmada Project, he

had no alternative but to surrender the ownership and possession of the land to the Government as a result of which, the father of the petitioner, who was an illiterate agriculturist was constrained to believe the same and had delivered the possession of his land to the acquiring body which should be regarded as illegal. According to the petitioner, no notice under Section 9 of the Act was issued either to the father of the petitioner or to the petitioner calling upon him to lodge objections regarding the market value to be determined by the Special Land Acquisition Officer and as the procedure contemplated by Section 9 of the Act was not followed, the award made under Section 11(2) of the Act should be treated as void ab-initio. What is averred by the petitioner is that after the award was made under Section 11(2) of the Act, no notice was given either to the father of the petitioner or to the

petitioner, as contemplated by Section 12(2) of the Act, and, therefore, the application filed by the deceased father of the petitioner on February 16, 1998, requiring the Special Land Acquisition Officer to refer the case to the Reference Court for the purpose of determination of just amount of compensation payable to him should have been entertained. The grievance made by the petitioner is that neither the Reference, as contemplated by Section 18 of the Act, is made to the Reference Court, nor decision is taken on the application submitted by the father of the petitioner in the year 1998 and as the action of the respondents in not entertaining the said application is illegal, appropriate direction should be given to him to refer the case to the Court for the purpose of determination of compensation payable to him. The petitioner has averred that the action of

the respondents in taking over the possession of the land without following the procedure laid down in the Act and the action of the respondents in not referring the matter to the Reference Court for the purpose of determination of the just amount of compensation payable to him are bad in law and therefore, appropriate direction should be issued to them. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

4. Mr.N.V.Solanki, learned counsel for the petitioner, contended that before the land acquisition proceedings commenced from the date of publication of notification under Section 4(1) of the Act in the official gazette on September 29, 1995, the actual possession of the land belonging to his father was taken over by the officers of the respondent

No.3 in an illegal manner and therefore, the action of the respondent No.3 in taking over the possession of the land of the father of the petitioner should be regarded as illegal. It was argued that under the guise and shelter of so-called requirement of the lands for rehabilitation and development under the Narmada Project, the land of the father of the petitioner was taken away without following the due procedure of law contemplated by the provisions of the Act by coercing him to hand over the possession of the land to the acquiring body and therefore also, the action of taking over the possession of the land should be regarded as ex-facie illegal, arbitrary and ultra-vires. What was asserted by the learned counsel for the petitioner was that the payment of compensation for the land acquired to the father of the petitioner was illegal, arbitrary and illusory because neither

the father of the petitioner was served notice under Section 9 of the Act nor the father of the petitioner was present at the time of making of the award nor was he informed about the fact of passing of any such award in respect of land owned by him by the respondent No.2 at any time after making of the award on May 12, 1997. The learned counsel for the petitioner emphasized that neither notice under Section 9 of the Act was issued to the father of the petitioner calling upon him to lodge objections nor any independent inquiry was made as to whether the father of the petitioner had consented to accept the amount of compensation offered by the respondent No.3 voluntarily and in absence of such inquiry, the award should be regarded as illegal. The learned counsel argued that in any view of the matter, the application submitted by the father of the petitioner under Section 18 of the

Act requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to him could not have been left unattended because no notice under Section 12(2) of the Act was issued to him and therefore, appropriate directions deserve to be issued to the respondent No.2 to make reference to the Court for the purpose of determination of just amount of compensation payable to the petitioner. It was argued that there existed no valid agreement between the parties nor lawful payment of adequate amount of compensation was made to the father of the petitioner by the committee constituted by the respondent No.3 and as the father of the petitioner had received the amount of compensation determined by the Special Land Acquisition Officer under Section 11(2) of the Act under protest, the prayer to refer the case to

the Court should have been accepted by the Special Land Acquisition Officer. The learned counsel maintained that in view of the glaring illegalities and irregularities committed by the respondents, the Court should issue notice to the respondents and after hearing the parties, appropriate decision should be rendered in the matter. In support of these submissions, the learned counsel for the petitioner has relied upon the decisions in; (1) Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another - AIR 1961 SC 1500, (2) State of Punjab v. Mst.Qaisar Jehan Begum and another - AIR 1963 SC 1604, (3) Mangat Ram Tanwar and another v. Union of India - AIR 1991 SC 1080, (4) Decision dated December 5, 2003, rendered by the Supreme Court of India in Civil Appeal No.4424 of 1997 which was filed by Orissa Industrial Infrastructure Development Corporation

against Supai Munda and others, (5) R.L.Jain (D) by Lrs v. DDA and others - AIR 2004 SC 1904, and (6) Parsottambhai Maganbhai Patel and others v. State of Gujarat and another - AIR 2005 SC 3464.

5. Ms.Mini Nair, learned Assistant Government Pleader, who appears for State on service of copy of the petition to the office of the Government Pleader in advance, contended that the petition is barred by the principles of delay and latches and therefore, should not be entertained by the Court. It was pointed out by the learned Assistant Government Pleader that the father of the petitioner had accepted the amount of compensation mentioned in the consent award without any objection and therefore, the belated claim raised in the petition by the petitioner should be rejected by the Court. What was asserted on behalf of the State was that the averments made in the

petition should not inspire confidence of the Court and therefore, the petition should be summarily dismissed.

6. This Court has heard the learned counsels for the parties at length and in great detail. This Court has also considered the documents forming part of the petition.

7. From the record of the case, it is evident that the land belonging to the father of the petitioner and other lands were needed for the public purpose of re-settlement and development of Narmada Project under Sardar Sarovar Narmada Nigam Limited. Therefore, attempts were made on behalf of the respondent No.3 to get the lands from their owners by private negotiations on payment of reasonable price. If attempts are made to get the lands by private negotiations for a public purpose, that cannot be termed as illegal at all. It may be mentioned

that after negotiations, the price to be paid to the land owners was determined by the respondent No.3 and the owners who were persuaded to part with possession of their lands by negotiations, were paid 90% of the amount determined by the respondent No.3. It is an admitted position that though 90% of the price fixed by negotiations was paid to father of the petitioner and others, no sale-deeds in respect of the lands were executed by the owners of the lands in favour of the respondent No.3. Therefore, in order to get clear title, it was necessary to undertake the procedure contemplated by the provisions of the Act and therefore, notification under Section 4(1) of the Act was issued which was published in the official gazette on September 29, 1995. The record shows that after the report under Section 5-A(2) of the Act was forwarded by the Special Land Acquisition Officer, the declaration

under Section 6 of the Act was made on November 22, 1996, a copy of which is produced at Annexure-B to the petition. Thereafter, the Special Land Acquisition Officer had proceeded to determine the compensation payable to the interested persons and made consent award under Section 11(2) of the Act on May 12, 1997. A copy of the award is produced by the petitioner at Annexure-C to the petition. In paragraph-11 of the award, it is mentioned that the interested persons had shown their willingness to sell their lands on payment of 90% of price determined by the Purchase Committee and had handed over the possession of the lands to the acquiring body. It is also mentioned therein that the price so determined included solatium, interest, amount calculated at the rate of 12% p.a. on the market value of the lands as well as encouragement compensation. It further mentions that the compensation also

included the amount payable to the interested persons for which construction were put up on the lands acquired, trees, wells, pipelines, etc., and therefore, they had executed agreements as contemplated by Schedule-15 and given up voluntarily their right to approach the Court for the purpose of enhancement of the compensation. It is also mentioned in the said paragraph that regarding this, necessary undertakings were filed by the interested persons to enable the Special Land Acquisition Officer to make consent award. On the basis of consent given by the interested persons, the consent award was made on May 12, 1997. On that day itself, the Special Land Acquisition Officer (Narmada Project), Unit No.4, Vadodara, wrote a letter to the Assistant Commissioner, Rehabilitation Unit No.3, Vadodara, asking him to disburse the remaining 10% of the compensation as mentioned in the consent award to the

interested persons and also forwarded a copy of the consent award dated May 12, 1997, rendered in Compensation Case No.35 of 1995 to him for necessary compliance. It is an admitted position that the deceased father of the petitioner had received the remaining amount of compensation as determined by the Special Land Acquisition Officer by his award which was made under Section 11(2) of the Act. Therefore, the statement made by the petitioner on oath in paragraph-5 of the petition that the father of the petitioner was neither present at the time when the award was made nor was he informed about the fact of making of award in respect of his land by the respondent No.2 does not inspire confidence of this Court, more particularly, when the petitioner has not explained the relevant fact as to in which circumstances, his deceased father had obtained remaining amount of

compensation determined as payable by the consent award.

8. The contention that the members of the Purchasing Committee constituted by the respondent No.3 had approached the father of the petitioner and coerced as well as virtually forced him to deliver the possession of the land by pressurising him and therefore the action of taking over possession of the land should be regarded as illegal has no substance at all. First of all, the petitioner has not disclosed in the petition as to how he learnt about the coercion made by the members of the Purchasing Committee constituted by the respondent No.3. It is not the case of the petitioner that he was physically present when his father was coerced by the members of the Committee nor it is the case of the petitioner that before the death of his father, he had a talk with his father

from which it transpired that his father was coerced to deliver the possession under duress. On the contrary, the father of the petitioner who made application under Section 18 of the Act mentioned in the said application that his lands were selected at the instance of Adivasis for whose resettlement, the lands were to be acquired and that assurance was given to him that one of his family members would be offered employment and that he would be paid compensation at the rate of Rs.100/- per sq.mt. but the promises were not fulfilled. In the application which was submitted by the father of the petitioner under Section 18 of the Act, it was mentioned that possession of the lands was taken over by the officers of the Government and thereafter the possession of the lands was handed over to Adivasis but these facts are not mentioned in the petition at all. Therefore, the contention based on

coercion and duress cannot be accepted nor the action of taking over the possession of the land can be regarded as illegal. There is no manner of doubt that on legal advice, for the first time, the deceased father of the petitioner had made an application under Section 18 of the Act through his lawyer on February 16, 1998, requiring the respondent No.2 to refer his case to the Court for the purpose of determination of just amount of compensation payable to him. The said application was hopelessly time-barred. Further, the consent award was made by the respondent No.2 under Section 11(2) of the Act. Section 18 of the Act provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objections be to the measurement of the land, the amount

of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. The record shows that the deceased father of the petitioner had accepted the award made by the respondent No.2 under Section 11(2) of the Act and had received the amount of the award without protest. Therefore, he was not entitled to invoke the provisions of Section 18 of the Act. It is an admitted fact that after publication of notification issued under Section 4 of the Act an inquiry under Section 5-A of the Act was conducted by the competent authority. If the father of the petitioner had not consented for acceptance of the price of the lands as determined by the respondent No.3, or had not agreed to hand over vacant and peaceful possession of his land voluntarily to the acquiring body in the year 1993, after acceptance of 90% of the

price determined by the respondent No.3, he would not have failed to lodge objections in the inquiry made under Section 5-A of the Act. However, it is an admitted position that no objections either by the father of the petitioner or by any of other land owners were filed in the inquiry under Section 5-A of the Act. This fact is also mentioned in the declaration made under Section 6 of the Act. It is relevant to notice that possession of the land in question was voluntarily handed over by the father of the petitioner in the year 1993 after acceptance of 90% of the price determined by the respondent No.3 whereas the rest 10% of the amount of compensation was received by the father of the petitioner in May 1997 pursuant to the consent award. Till filing of the application under Section 18 of the Act under legal advice on February 16, 1998, the father of the petitioner had not made any

grievance before any authority that he was duped by the officers of the respondent No.3 or that the possession of his land was taken over from him forcibly as alleged in the application filed under Section 18 of the Act or that he had not given consent before the consent award was made or that at the time of making of consent award, he was present or that he was not served with any notice either under Section 9 or under Section 12 of the Act etc. Therefore, the statement made in the award that the interested persons had executed necessary agreements to enable the Land Acquisition Officer to make consent award inspires confidence and deserves to be accepted. In view of these circumstances, it will have to be held that the father of the petitioner had accepted the amount of compensation without protest and voluntarily. Section 31 of the Act interalia provides that on making of award under Section 11 of the

Act, the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and has to pay the same to them unless prevented by one or more of the contingencies mentioned in sub-section 2 of Section 31 of the Act. Sub-section 2 of Section 31 provides that if the interested persons do not give consent to receive the amount determined as payable to them or if there be no person competent to alienate the land or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector has to deposit the amount of compensation in the Court to which a Reference under Section 18 of the Act would normally be submitted. However, the second proviso to sub-section 2 of Section 31 provides that no person, who has received the amount otherwise than under protest, shall be entitled to make any application under

Section 18 of the Act. On the facts and in the circumstances of the case, this Court is of the opinion that the deceased father of the petitioner had received the amount of compensation determined by the consent award without protest and was therefore not entitled to make application under Section 18 of the Act. Therefore, it was not necessary for the respondent No.2 to refer the case of the father of the petitioner to the competent Court for the purpose of determination of just amount of compensation payable to him, more particularly when it was time-barred. It may be mentioned that though the application under Section 18 of the Act was made by deceased father of the petitioner on February 16, 1998, till the date of filing of the petition, neither the deceased father of the petitioner nor the petitioner had approached the Court and made grievance about non-consideration or non-disposal of the said

application by the respondent No.2. Such a grievance is raised in the instant petition for the first time which was filed on October 9, 2006, i.e. after about more than eight years. The petitioner has not made any sincere efforts to explain the delay caused in filing the instant petition and claiming reliefs. Further, the so-called inaction on the part of the respondent No.2 in not deciding the application submitted by the deceased father of the petitioner on February 16, 1998, is sought to be challenged in the year 2007. As observed earlier, there is enormous delay in filing the petition which is not explained and therefore, the petitioner is liable to be non-suited on the ground of delay and latches in approaching the Court under Article 226 of the Constitution.

9. The contention that no notice under

Section 12(2) of the Act was served by the respondent No.2 upon the deceased father of the petitioner and therefore, the deceased father of the petitioner was justified in filing application under Section 18 of the Act is devoid of merits. As observed earlier, the father of the petitioner accepted remaining 10% of the amount of compensation payable under the consent award in May 1997. The receipt of remaining amount of compensation as per the award made by the respondent No.2 under Section 11(2) of the Act by the deceased father of the petitioner would itself indicate that the deceased father of the petitioner was aware about the fact of making of award by the respondent No.2 under Section 11(2) of the Act. Therefore, the contention based on non-service of notice under Section 12(2) of the Act cannot be accepted and is hereby rejected.

10. The land acquisition proceedings which were initiated in the year 1995 pursuant to the publication of notification issued under Section 4(1) of the Act in the official gazette on September 29, 1995, cannot be regarded as illegal at all. The list of relevant events indicates that the possession of the lands was handed over by the father of the petitioner in the year 1993 after which notification issued under Section 4 of the Act was published on September 9, 1995, whereas the declaration made under Section 6 of the Act was published on November 22, 1996, after which the consent award was made on May 12, 1997 and the father of the petitioner had made application under Section 18 of the Act on February 5, 1998. As noticed earlier, the instant petition was filed on October 9, 2006, and was got placed for admission hearing before the Court today, i.e. on February 2, 2007. There is hardly any doubt that

the petition claiming prayers to declare that the possession of the lands was taken over illegally or to direct the respondent No.2 to make reference is filed belatedly. It is well-settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate Writ is discretionary. The relief under Article 226 cannot be claimed as of right. One of the grounds for refusing relief under Article 226 of the Constitution is that the petitioner has been guilty of delay and latches. It is imperative, if the petitioner wants to invoke the extra-ordinary remedy available under Article 226, that he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a Writ will be an adequate ground for refusing to exercise the discretion. It is essential that persons who are aggrieved by any order of the Government

or any executive action should approach the High Court with utmost expedition. In view of unexplained inordinate delay in filing the petition coupled with the fact that poor Adivasis who were affected by the Narmada Dam have been resettled long back on the lands in question, this Court is of the opinion that the prayers made in the petition cannot be granted. No case is made out by the petitioner to declare that the actions of the respondents in taking over possession of the lands belonging to his father and/or passing of the consent award by the respondent No.2 on May 12, 1997, in Compensation Case No.35 of 1995 in respect of the lands belonging to the father of the petitioner are illegal, arbitrary or ultra-vires.

11. As noticed earlier, the learned counsel for the petitioner has cited several authorities at the Bar for the guidance

of this Court. However, on going through the same, this Court finds that they turn on their own facts and as the ratio laid down in those decisions is not applicable to the facts of this case, detailed reference to the same is avoided.

12. On the facts and in the circumstances of the case, this Court is of the opinion that as no ground is made out by the petitioner for granting any of the reliefs claimed in the petition, the petition, which lacks merits, deserves to be dismissed.

13. For the foregoing reasons, the petition fails and is dismissed.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)